Reserved Judgment

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

(1) Writ Petition (M/S) No. 554 of 2001

Sukhbir Singh, S/O Sri Ram Swarup,
R/O 243/4, Matawala Bagh, Purani Tehsil, Roorkee,
District Haridwar.

…. **Petitioner.**

Versus

1. District and Sessions Judge, Hardwar.
2. Prescribed Authority/Civil Judge (Jr. Div.)
   Roorkee, District Hardwar.
3. Vinod Kumar, S/O Laxmi Chand Sharma,
   R/O F-6/10, Sector 15, Rohini, Delhi.
   Permanent resident of 243/1 Purani Tehsil Roorkee,
   District Hardwar.

… **Respondents.**

Sri Sharad Sharma, Advocate, learned counsel for the petitioner.
Learned Standing Counsel for the respondent no. 1 & 2.
Sri Nagesh Agarwal, Adv., learned counsel for the respondent no.3.

Dated May 18, 2006

PC:
(Hon'ble B.S. Verma, J.)

By means of the present writ petition, the petitioner has challenged the order dated 05-01-2001, passed by the District Judge Hardwar in Misc. Case No. 06 of 2001, Sukhbir Singh Vs. Vinod Kumar, whereby the application paper no. 6-A under Section 5 Limitation Act moved for condonation of delay for filing the application for restoration of Appeal No. 22 of 1999 was rejected.

Relevant facts of the case are that the respondent no. 3 Vinod Kumar filed an application under Section 21(1)(a) of the U.P. Act No. XIII of 1972 (***for short the Act***) for eviction of the petitioner, which was registered as P.A. Case No. 6 of 1995 before the Prescribed Authority with the prayer that the need of the landlord was bona fide for release of accommodation Quarter No.

243/4, Mohalla Purani Tehsil Roorkee, District Hardwar of which the petitioner is a tenant on a monthly rent of Rs. 50/-. Since the accommodation in possession of the landlord is not sufficient and hardship was being caused to him, he requires the same. It was also alleged that the tenant has no need for the accommodation and he has already shifted to Meerut at his own residence and the premises was locked by him without any valid cause. The application under Section 21 (1) (a) of the Act was contested by the petitioner on the ground inter alia that he was tenant of one Kundan Lal at the rate of Rs. 50/- per month as rent. Kundal Lal died in the year 1976 and the petitioner became the tenant of his widow Smt. Raja Dei, who too had died on 8.8.1985 and her two daughters became the landlady of the accommodation and the younger daughter Rajkumari used to recover regular rent from him.

Both the parties led their evidence by filing affidavits. The learned Prescribed Authority after considering the material on record came to the conclusion that the need of the landlord is bona-fide and on the point of comparable hardship, he found favour with the landlord. Accordingly, the application under Section 21(1)(a) was allowed and the O.P.-petitioner was ordered to vacate the accommodation within a period of thirty days vide judgment and order dated 17-02-1999. Aggrieved, the petitioner preferred an appeal before the District Judge, which was registered as P.A. Appeal No. 22 of 1999.

The record reveals that in the appeal 11-10-2000 was fixed for hearing. The petitioner-appellant had engaged a lawyer from Roorkee. It appears that on the date of hearing, the lawyers were on strike. The appeal was dismissed for want of prosecution by the District Judge. Subsequently, the appellant-petitioner filed application for restoration of appeal along with application under Section 5 of the Limitation Act, alleging therein that due to strike of the lawyers on 11.10.2000, his counsel could not appear in the appeal and the petitioner being an old and ailing person had gone to

Meerut in connection with his treatment, where he remained admitted from 5.10.2000 to 24.11.2000 in the clinic of Dr. Ashok Kumar Garg and was unable to do Pairvi of his appeal. It was alleged that on 25.11.2000, the petitioner went to his lawyer, where he came to know that the lawyer will call off the strike on 5.12.2000. It was asserted that there was no deliberate delay on the part of the petitioner. The application was supported by an affidavit.

The learned District Judge after considering the application and affidavit filed by the petitioner did not accept the contention of the petitioner to condone the delay on the ground that the applicant had not filed any document to show that he actually remained hospitalized at Meerut as well as it was observed that the strike of the lawyers was called off on 5.11.2000. Ultimately, the application for condonation of delay was rejected.

The main ground on which the impugned order dated 5-1-2001 is that before the learned District Judge the opposite party-respondent had not filed any objection against the affidavit filed by the petitioner contending that he remained ill. Admittedly, on 11.10.2000, the lawyers were on strike and the appellant-petitioner was not present before the Court. It was also contended that even on 5.1.2001, there was none to oppose the application for condonation of delay from the side of the respondents.

I have heard learned counsel for both the parties and perused the material on record.

Learned counsel for the petitioner vehemently submitted that in the present case there was a delay of only 34 days in filing the restoration application. It was urged on behalf of the petitioner that it is admitted fact that on 11-10-2000 the lawyers were abstaining from work in the court and a strike was continuing. It was also submitted that the lawyer engaged by the petitioner used to come from Roorkee to Hardwar. It was pointed out that the

affidavit filed by the applicant-petitioner remained un-rebutted from the side of the respondent and even on the date when the impugned order was passed, there was none to oppose the application. The learned counsel has submitted that the power to condone the delay is discretionary and is to be liberally construed and he has placed reliance in the case of ***Apangshu Mohan Lodh and others Vs. State of Tripura and others [(2004) 1 Supreme Court Cases, Page 119].***

I have considered all the aspect of the matter from all the four corners and have perused the case cited above. It is true that there was delay of 34 days in filing the application for restoration of appeal before the appellate court. It is also true that the petitioner had not filed illness certificate in support of his contention, but he did file an affidavit along with the application. The record clearly reveals that the affidavit filed by the petitioner for condoning the delay was not resisted from the side of the respondent.

In the case of ***Apangshu Mohan Lodh and others (supra),*** there was delay of 460 days in filing the appeal before the Division Bench of the Gauhati High Court, which was condoned and order of the learned Single Judge was set aside by allowing the appeal on merit. The appellants before the Apex Court urged that since the appeal was grossly delayed and there being no explanation for condonation of delay, the High Court ought not to have condoned the same. The Apex Court has observed in paragraph no. 2 ***"that this power of condonation is discretionary and has to be liberally construed."***

In the case at hand, there was delay of 34 days and the petitioner-applicant has filed an affidavit to substantiate his contention made to explain the delay. Indisputably, the averments made by the petitioner in his affidavit were not rebutted from the

side of the respondents. Taking into consideration the facts and circumstances of the case particularly as the application was not opposed before the District Judge as well as in the light of the law laid down by the Apex Court in the aforesaid cited case, I am of the view that it is a fit case to condone the delay. The impugned order passed by the District Judge dated 5.1.2001 is set aside. The delay in filing the restoration application is condoned.

The writ petition succeeds and is allowed accordingly. The Appellate Court shall proceed to decide the restoration application on merit expeditiously. Costs easy.

(B.S. VERMA, J.)

R.C.P.